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July 22, 2014

To: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

A handwritten signature in black ink, appearing to read "W. T. Fujioka", is written over the printed name and title.

SACRAMENTO UPDATE – LEGISLATION OF COUNTY INTEREST RELATED TO VOTING RIGHTS

Executive Summary

This memorandum contains reports on legislative measures that would: 1) subject any local changes to voting-related laws, policies and procedures to State preclearance; and 2) prohibit a district-based election if it would impair the ability of a protected class to elect candidates of its choice or otherwise influence the outcome of an election.

AB 280 (Alejo) - Voting Rights: Preclearance

AB 280 (Alejo), as amended on June 18, 2014, would subject specified political subdivisions, including counties, cities, and school districts, to State preclearance of changes to voting-related laws and procedures, including any changes to at-large elections, jurisdiction boundaries, redistricting, voting locations, and/or multilingual voting materials.

On June 25, 2013, in a 5 to 4 decision (*Shelby County v. Holder*), the U.S. Supreme Court struck down as unconstitutional Section 4(b) of the Voting Rights Act, which defines which jurisdictions are subject to Federal clearance for any changes to law and practices affecting voting so as to ensure that the changes do not have the purpose of denying or abridging the right to vote on account of race or color. In California there

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were three counties, Kings, Monterey and Yuba, that had been subject to Federal preclearance under Section 4(b) of the Voting Rights Act.

As amended, AB 280 would establish a State preclearance system for any changes to voting-related laws, policies and procedures proposed by a political subdivision with two or more protected classes that each represent 20 percent of the citizen voting-age population. Specifically, this measure would require that the governing body of a covered political subdivision submit any changes to voting-related laws, regulations, or policies to the Secretary of State for approval, including those that would make changes to:

- an at-large method of election that adds offices elected at-large or converts offices elected by single-member districts to one or more at-large or multi-member districts;
- the boundaries of an electoral jurisdiction or a series of changes within a year to the boundaries of an electoral jurisdiction that reduces the size of the citizen voting-age population of a protected class by 3 or more percent;
- redistricting that alters the boundaries of an electoral jurisdiction in which a protected class has experienced a population increase of at least 10,000 citizens or 20 percent of the citizen voting-age population over the preceding decade;
- voting locations that reduces, consolidates, or relocates one or more voting locations, including an early, absentee, or election-day voting location, and results in a net loss, on a per voter basis, of specified voting locations; and
- multilingual voting materials that reduces the voting materials available in languages other than English, or alters the manner in which the materials are provided, if no similar change occurs in English materials.

AB 280 provides that the Secretary of State (SOS) would issue a written decision within 60 days of a preclearance request. Additionally, the bill further provides that:

- the SOS may consider and attempt to accommodate a request for an expedited review if the political subdivision has a demonstrated need to implement the proposed change before the end of the 60-day review period;
- the governing body of the political subdivision shall have the burden of establishing by objective and compelling evidence that the proposed change is not likely to result in a discriminatory effect; and

- if the SOS denies a request, the political subdivision may seek a review of the decision by means of an action filed in superior court.

Finally, this measure would allow the Attorney General or a registered voter to file an action in superior court to compel the political subdivision to comply with this bill.

The Registrar-Recorder/County-Clerk (RR/CC) notes that the County would be subject to the State preclearance process under AB 280. RR/CC indicates they understand the bill's intent, but note significant operational concerns, foremost the bill's requirement to preclear voting location changes for which the lengthy proposed process would conflict with operational realities. RR/CC reports that current law requires that polling locations be established and printed in the sample ballots mailed to voters starting 29 days prior to an election. RR/CC indicates that preclearing thousands of polling sites before an election would be very costly and time consuming. Additionally, every election hundreds of voting locations are subject to change due to cancellations by the owners and/or operators of the location. These changes happen throughout the month leading up to Election Day. Preclearing emergency changes to polling places, often need a day or two before the election, would be impossible under the 60 day process or even the emergency preclearance process, which is subject to the Secretary of State's option, availability, and does not guarantee an expedited response. County Counsel agrees that there may be a conflict between this requirement, statutory deadlines for mailing of election materials, and existing elections law, which grant the elections official, and not the governing body, specified duties and certain discretion over pre-election and Election Day procedures, including precincts, boundary restrictions, and polling places.

County Counsel reports that AB 280 could cause other unintended issues for the County. They note that the measure would apply to voting related laws, regulations, or policies that are enacted or administered after the bill's enactment, and therefore, could be broadly interpreted to cover all voting related laws, regulations and policies. County Counsel indicates that because of this ambiguity, the Attorney General or a registered voter may challenge any of the Counties' current voting policies and procedures as being subject to State preclearance. This could lead to costly litigation, including suits for cities and school districts for which the County administers elections for. Additionally, County Counsel indicates that the bill's challenge provisions could be interpreted to imply Private Rights of Action for plaintiffs, judicially inferred rights to relief from injuries caused by another's violation of a statute. County Counsel further notes that under AB 280, the County would have the burden of establishing, via objective and compelling evidence, that a change in voting policies or procedures would not likely result in a discriminatory effect; however, the terms under which evidence is considered objective and compelling is not defined, creating an unclear standard of proof. Separately, County Counsel reports that under this measure's potential broader

coverage, the County's most recent redistricting, as well as other existing voting related laws and policies, may also be challenged.

This measure is scheduled to be heard by Senate Appropriations Committee on August 4, 2014.

AB 280 is co-sponsored by the Mexican American Legal Defense and Education Fund and California Civil Rights Coalition. It is supported by the American Civil Liberties Union; Asian Americans Advancing Justice-Los Angeles; California Immigrant Policy Center; Chinese for Affirmative Action; Dolores Huerta Foundation; Equality California; Equal Justice Society; Japanese American Citizens League; Kings County Latino Round Table; Lawyers' Committee for Civil Rights; League of Women Voters of California; Richard Valle, Supervisor, Kings County; and Tri-County Association of Latino Elected Officials.

This measure is opposed by the California Association of Clerks and Election Officials; County of Yuba; and Rural County Representatives of California.

SB 1365 (Padilla) - California Voting Rights Act of 2001

SB 1365 (Padilla), as amended on July 1, 2014, would prohibit a district-based election in a political subdivision, including counties and cities, if it would impair the ability of a protected class to elect candidates of its choice or otherwise influence the outcome of an election.

The California Voting Rights Act (CVRA) of 2001 prohibits the use of an at-large election in a political subdivision if it would impair the ability of a protected class to elect candidates of its choice or otherwise influence the election outcome. The CVRA allows voters who are members of a protected class to bring an action in superior court to enforce the provisions of the CVRA, and if they prevail, may be awarded reasonable litigation costs and attorney's fees. The CVRA requires a court to implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

SB 1365 would expand the California Voting Rights Act to similarly permit members of a protected class to challenge in superior court a district-based election system that purportedly impairs a protected class of voters from electing the candidates of its choice or to influence an election's outcome as a result of the abridgement of their voting rights. Additionally, this bill would:

- provide that the fact that a district-based election was imposed as a result of an action filed pursuant to the CVRA shall not be a defense to an allegation that the district-based election violates the provisions of this bill;
- require a court, upon finding that a political subdivision's district-based elections violate this bill, to implement appropriate remedies tailored to correct the violation and guided in part by the views of the protected class;
- require the court to implement an effective district-based elections system that provides the protected class the opportunity to elect candidates of its choice from single-member districts;
- provide that if an effective district-based elections system is not possible, the court shall implement a single-member district-based election system that allows the protected class to join in a coalition of two or more protected classes of voters to elect candidates of their choice;
- require a court, if the remedies outlined above are not legally viable, to implement other appropriate remedies, including increasing the size of the governing body, issuing an injunction to delay an election, or requiring an election to be held on the same day as a statewide election; and
- provide that if the parties to an action brought under this bill agree to settle a dispute, the parties shall consider the remedies provided for in this bill when negotiating a settlement agreement.

Under SB 1365, plaintiffs that bring successful challenges to district-based election systems would be able to recover attorney's fees, including expert witness fees and expenses; however, prevailing defendants would not be eligible to recover costs, unless the court finds the action to be frivolous, unreasonable, or without foundation. According to the author, this bill would protect minority voters from poorly drawn districts, which can negatively impact voter turnout and equitable representation as at-large elections.

County Counsel notes that a court, as a remedy to violations under this bill, may require that a political subdivision's election be held on the same day as a statewide election, which could pose problems for the County with regard to the consolidation of elections. The Registrar-Recorder/County-Clerk notes that in such a case, if the County's voting system is not capable of consolidating another local jurisdiction's election with the statewide election, that jurisdiction could be forced to hold a concurrent election.

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This measure is currently on the Assembly Floor.

SB 1365 is co-sponsored by the American Civil Liberties Union of California; Asian Americans Advancing Justice—Los Angeles; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Mexican American Legal Defense and Educational Fund; and National Association of Latino Elected and Appointed Officials Educational Fund. It is supported by the California Latino Legislative Caucus; League of Women Voters of California; Secretary of State Debra Bowen; and Service Employees International Union, California State Council. There currently is no opposition on file.

This office will continue to work with the Registrar-Recorder/County Clerk and County Counsel to closely monitor these measures. We will keep the Board apprised of any developments.

WTF:RA
MR:PC:lm

c: All Department Heads
Legislative Strategist
Local 721
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations
Buddy Program Participants